

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 546

BY EDUCATION COMMITTEE

AN ACT

RELATING TO PURCHASING BY POLITICAL SUBDIVISIONS; AMENDING SECTION 67-2803, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROCUREMENT REQUIREMENTS FOR CERTAIN CONTRACTS OR PURCHASES BY SCHOOL DISTRICTS AND TO PROVIDE THAT PROCUREMENT REQUIREMENTS SHALL NOT APPLY TO THE PROCUREMENT OF CERTAIN FINANCIAL SERVICES; AMENDING SECTION 67-2806, IDAHO CODE, TO PROVIDE FOR AN EXCEPTION, TO PROVIDE THAT CERTAIN PROCUREMENT PROVISIONS SHALL APPLY TO SCHOOL DISTRICTS, TO PROVIDE FOR THE AWARD OF CONTRACTS, TO PROVIDE THAT A POLITICAL SUBDIVISION MAY ACQUIRE PROPERTY FROM A RESPONSIBLE BIDDER WHOSE BID MEETS CERTAIN REQUIREMENTS, TO PROVIDE THAT CERTAIN PROCUREMENT PROCEDURES SHALL APPLY TO SCHOOL DISTRICTS, TO PROVIDE FOR PROCUREMENT TO BE MADE FROM THE LOWEST RESPONSIBLE BIDDER COMPLYING WITH CERTAIN REQUIREMENTS, TO REVISE TERMINOLOGY AND TO DEFINE A TERM; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2803, Idaho Code, be, and the same is hereby amended to read as follows:

67-2803. EXCLUSIONS. The procurement requirements established in this chapter shall not be applicable to:

(1) The acquisition of personal property when the procurement duplicates the price and substance of a contract for like goods or services that has been competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government;

(2) Contracts or purchases by political subdivisions, other than school districts, wherein expenditures are less than twenty-five thousand dollars (\$25,000), provided such contracts or purchases shall be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board;

(3) Contracts or purchases by school districts wherein expenditures are less than the greater of thirty dollars (\$30.00) per student enrolled in the district at the beginning of the academic year in which the contract or purchase is made or twenty-five thousand dollars (\$25,000). Provided however, that such contracts or purchases shall be guided by the best interests of the school district as determined by the local board of trustees.

(4) Disbursement of wages or compensation to any employee, official or agent of a political subdivision for the performance of personal services for the political subdivision;

(5) Procurement of personal or professional services to be performed by an independent contractor for the political subdivision;

(6) Procurement of an interest in real property;

(7) Procurement of insurance;

1 (78) Costs of participation in a joint powers agreement with other
2 units of government; ~~or~~

3 (89) Procurement of used personal property by irrigation districts and
4 their boards of control;

5 (10) Procurement of banking, investment or other financial services;
6 or

7 (11) Procurement of goods or services by school districts by
8 lease-purchase arrangement in accordance with the provisions of section
9 33-601A, Idaho Code.

10 SECTION 2. That Section 67-2806, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 67-2806. PROCURING SERVICES OR PERSONAL PROPERTY. (1) When a
13 political subdivision, other than a school district, contemplates an
14 expenditure to purchase or lease personal property or to procure services,
15 other than those services excluded pursuant to section 67-2803, Idaho
16 Code, valued in excess of twenty-five thousand dollars (\$25,000) but not
17 to exceed fifty thousand dollars (\$50,000), the procurement procedures of
18 this subsection (1) shall apply. When a school district contemplates an
19 expenditure to purchase or lease personal property or to procure services,
20 other than those services excluded pursuant to section 67-2803, Idaho Code,
21 valued in excess of the greater of thirty dollars (\$30.00) per student
22 enrolled in the district at the beginning of the academic year in which the
23 purchase or procurement is made or twenty-five thousand dollars (\$25,000);
24 but not to exceed the greater of sixty dollars (\$60.00) per student enrolled
25 in the district at the beginning of the academic year in which the purchase
26 or procurement is made or fifty thousand dollars (\$50,000), the procurement
27 provisions of this subsection (1) shall apply.

28 (a) The solicitation for bids shall be supplied to no fewer than
29 three (3) vendors by written means, either by electronic or physical
30 delivery. The solicitation shall describe the personal property
31 or services to be purchased or leased in sufficient detail to allow
32 a vendor dealing in such goods or services to understand what the
33 political subdivision seeks to procure.

34 (b) The solicitation for bids shall describe the electronic or physical
35 delivery method or methods authorized to submit a bid, the date and time
36 by which a bid proposal must be received by the clerk, secretary or other
37 authorized official of the political subdivision, and shall provide a
38 reasonable time to respond to the solicitation, provided that except in
39 the event of an emergency, such time shall not be less than three (3)
40 business days.

41 (c) Written objections to specifications or bid procedures must be
42 received by the clerk, secretary or other authorized official of the
43 political subdivision at least one (1) business day before the date and
44 time upon which bids are scheduled to be received.

45 (d) When written bids have been received, by either physical or
46 electronic delivery, they shall be compiled and submitted to the
47 governing board or governing board-authorized official. ~~which shall~~
48 ~~approve the responsive bid proposing the lowest procurement price or~~
49 The contract shall be awarded to the lowest responsible bidder whose

1 bid meets the requirements provided for in the solicitation for bids.
 2 If the governing board fails to award the contract, it shall reject all
 3 bids and publish notice for bids, as before.

4 (e) If the political subdivision finds that it is impractical or
 5 impossible to obtain three (3) bids for the proposed procurement,
 6 the political subdivision may acquire the property in any manner the
 7 political subdivision deems best from a ~~qualified vendor~~ responsible
 8 bidder quoting the lowest price whose bid meets the requirements
 9 provided for in the solicitation for bids. When fewer than three (3)
 10 bids are considered, a description of the efforts undertaken to procure
 11 at least three (3) bids shall be documented by the political subdivision
 12 and such documentation shall be maintained for at least six (6) months
 13 after any such procurement is made. If two (2) or more price quotations
 14 are the same and the lowest responsive bids, the authorized decision
 15 maker may accept the one (1) it chooses.

16 (2) When a political subdivision, other than a school district,
 17 contemplates an expenditure to purchase or lease personal property or to
 18 procure services, other than those services excluded pursuant to section
 19 67-2803, Idaho Code, valued in excess of fifty thousand dollars (\$50,000),
 20 the procurement procedures of this subsection (2) shall apply. When a
 21 school district contemplates an expenditure to purchase or lease personal
 22 property or to procure services, other than those services excluded pursuant
 23 to section 67-2803, Idaho Code, valued in excess of the greater of sixty
 24 dollars (\$60.00) per student enrolled in the district at the beginning of
 25 the academic year in which the expenditure is made or fifty thousand dollars
 26 (\$50,000), the procurement procedures of this subsection (2) shall apply.

27 (a) The purchase or lease shall be made pursuant to an open competitive
 28 sealed bid process with the procurement to be made from the ~~qualified~~
 29 lowest responsible bidder ~~submitting the lowest bid price~~ complying
 30 with bidding procedures and meeting the specifications for the
 31 goods and/or services sought to be procured as provided for in the
 32 solicitation for bids.

33 (b) ~~The request~~ solicitation for bids shall set a date, time and place
 34 for the opening of bids. Two (2) notices soliciting bids shall be
 35 published in the official newspaper of the political subdivision.
 36 The first notice shall be published at least two (2) weeks before
 37 the date for opening bids, with the second notice to be published in
 38 the succeeding week at least seven (7) days before the date that bids
 39 are scheduled to be opened. The notice shall succinctly describe
 40 the personal property and/or service to be procured. Copies of
 41 specifications, bid forms, bidder's instructions, contract documents,
 42 and general and special instructions shall be made available upon
 43 request by any interested bidder.

44 (c) Written objections to specifications or bidding procedures must
 45 be received by the clerk, secretary or other authorized official of the
 46 political subdivision at least three (3) business days before the date
 47 and time upon which bids are scheduled to be opened.

48 (d) If the political subdivision deems it is in the political
 49 subdivision's best interest, it may require the bidder to provide
 50 bid security in an amount equal to at least five percent (5%) of the

amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(i) Cash;

(ii) A cashier's check made payable to the political subdivision;

(iii) A certified check made payable to the political subdivision;

or

(iv) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.

(e) Any bid received by the political subdivision may not be withdrawn after the time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public at a designated place and time, thereafter to be compiled and submitted to the governing board.

(f) If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision at the sole discretion of the governing board and thereafter the proceeds may be deposited in a designated fund out of which the reasonable expenses for procuring substitute performance are paid.

(g) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the next lowest ~~qualified~~ responsible bidder. If the governing board awards the contract to the next lowest ~~qualified~~ responsible bidder, the amount of the lowest ~~qualified~~ responsible bidder's security may be applied by the political subdivision to the difference between the lowest ~~responsive~~ responsible bid and the next lowest ~~responsive~~ responsible bid, and the surplus, if any, shall be returned to the lowest responsible bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.

(h) In its discretion, the governing board may reject all bids presented and re-bid, or the governing board may, after finding it to be a fact, pass a resolution declaring that the subject goods or services can be procured more economically on the open market. If two (2) or more bids are the same and the lowest ~~responsive~~ responsible bids, the governing board may accept the one (1) it chooses. In its discretion, the governing board of a political subdivision may preauthorize the purchase of equipment at a public auction.

(i) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of personal property or services to a bidder other than the apparent lowest responsible bidder, the political subdivision shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all who have submitted a competing bid.

(j) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice,

1 setting forth in such response the express reason or reasons that the
2 award decision of the governing board is in error. Thereafter, staying
3 performance of any procurement until after addressing the contentions
4 raised by the objecting bidder, the governing board shall review
5 its decision and determine whether to affirm its prior award, modify
6 the award, or choose to re-bid, setting forth its reason or reasons
7 therefor. After completion of the review process, the political
8 subdivision may proceed as it deems to be in the public interest.

9 (3) "Solicitation for bids" means all documents, whether attached
10 or incorporated by reference, utilized for soliciting or requesting
11 bids. The solicitation for bids may specify criteria related to quality,
12 service, workmanship and suitability to the purpose for which such bids are
13 requested.

14 SECTION 3. An emergency existing therefor, which emergency is hereby
15 declared to exist, this act shall be in full force and effect on and after its
16 passage and approval.